

App. 1

APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

(Filed Apr. 21, 2021)

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of April, two thousand twenty-one.

PRESENT: JOHN M. WALKER, JR.,
DENNY CHIN,
Circuit Judges,
PAUL A. ENGELMAYER,
*District Judge.**

* Judge Paul A. Engelmayer, of the United States District Court for the Southern District of New York, sitting by designation.

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ANTHONY FUTIA, JR., ROBERT L.
SCHULZ,

Plaintiffs-Appellants,

-v-

20-2947-cv

WESTCHESTER COUNTY BOARD
OF LEGISLATORS, BENJAMIN
BOYKIN, II, Chairman, HARRISON
TOWN BOARD, RON BELMONT,
Supervisor,

Defendants-Appellees.

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FOR PLAINTIFFS-
APPELLANTS:

ROBERT L. SCHULZ,
pro se, Queensbury, New
York, and Anthony Futia,
Jr., *pro se*, North White
Plains, New York.

FOR DEFENDANTS-
APPELLEES
WESTCHESTER
COUNTY BOARD OF
LEGISLATORS AND
BENJAMIN BOYKIN, II:

DAVID H. CHEN, Deputy
County Attorney, Appeals,
for John M. Nonna,
Westchester County
Attorney, White Plains,
New York.

FOR DEFENDANTS-
APPELLEES HARRISON
TOWN BOARD AND
RON BELMONT:

RICHARD S. FINKEL,
Bond, Schoeneck & King
PLLC, Garden City,
New York.

Appeal from the United States District Court for
the Southern District of New York (Briccetti, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AF-FIRMED**.

Plaintiffs-appellants Anthony Futia, Jr. and Robert L. Schulz (together, “plaintiffs”) appeal the district court’s judgment, entered August 7, 2020, dismissing their claims against defendants-appellees the Westchester County Board of Legislators and its chairman Ben Boykin, II, and the Harrison Town Board and its supervisor Ron Belmont (collectively, “defendants”)¹ for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6). We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Plaintiffs’ federal claims are based on their allegations that defendants violated the Guarantee Clause of the United States Constitution by voting to increase compensation for elected officials during the term for which they were elected, which deprived plaintiffs of a republican form of government. Plaintiffs further allege that defendants’ failure to respond to the petitions they submitted to complain about this pay increase violated their rights under the Petition Clause of the

¹ In their opposition to the defendants’ motion to dismiss, plaintiffs clarified that they were not suing Boykin or Belmont, and the district court accordingly dismissed the claims against those defendants. Plaintiffs do not contest those dismissals on appeal.

App. 4

First Amendment. They also allege claims under state and local law.²

“When reviewing the dismissal of a complaint for lack of subject matter jurisdiction” under Rule 12(b)(1), “we review factual findings for clear error and legal conclusions *de novo*.” *Liranzo v. United States*, 690 F.3d 78, 84 (2d Cir. 2012); *see also Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.À.R.L.*, 790 F.3d 411, 417 (2d Cir. 2015) (reviewing dismissal of complaint for lack of standing under Rule 12(b)(1) *de novo*). We also review *de novo* the dismissal of a complaint for failure to state a claim under Rule 12(b)(6). *Forest Park Pictures v. Universal Television Network*, 683 F.3d 424, 429 (2d Cir. 2012). Finally, we review a district court’s decision declining to exercise supplemental jurisdiction over state law claims for abuse of discretion. *Klein & Co. Futures, Inc. v. Bd. of Trade of City of New York*, 464 F.3d 255, 262 (2d Cir. 2006).

The district court did not err in finding that neither plaintiff had standing to sue the Harrison Town Board because neither is a resident of the Town of Harrison, and status as a state taxpayer alone is insufficient to establish standing. *See Bd. of Educ. of Mt. Sinai Union Free Sch. Dist. v. New York State Tchrs. Ret. Sys.*, 60 F.3d 106, 110 (2d Cir. 1995) (“State taxpayers, like federal taxpayers, do not have standing to

² In an earlier appeal brought by these plaintiffs, we affirmed by summary order the district court’s dismissal of similar claims. *See Futia v. State of New York*, No. 19-286-cv (2d Cir. Nov. 24, 2020). The Supreme Court denied plaintiffs’ petition for a writ of certiorari on March 29, 2021.

challenge the actions of state government simply because they pay taxes to the state.”). Further, the district court correctly held that Schulz, who does not live in Westchester County, does not have standing to sue the Westchester County Board of Legislators because he does not have a “direct and immediate” relationship with the County sufficient to confer standing. *See id.* at 110-11.

The district court also did not err in dismissing plaintiffs’ Guarantee Clause claim for lack of subject matter jurisdiction because the claim presents nonjusticiable political questions, such as local government budget allocation. *See, e.g., Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019) (“This Court has several times concluded . . . that the Guarantee Clause does not provide the basis for a justiciable claim.”). The district court also did not err in dismissing plaintiffs’ Petition Clause claim for failure to state a claim, because the right to petition the state does not mean there is a right to a response. *See Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 285 (1986). The Supreme Court’s broad discussion of the Petition Clause in *Knight*, contrary to plaintiffs’ claim, was not limited to public employees or policy complaints. *See id.* (“Nothing in the First Amendment or in this Court’s case law interpreting it suggests that the right[] to . . . petition require[s] government policymakers to listen or respond to *individuals’* communications on *public issues*.” (emphasis added)). Finally, the district court did not abuse its discretion in declining to exercise supplemental jurisdiction over the state law claims. *See Klein*

App. 6

& Co. Futures, Inc., 464 F.3d at 262 (“It is well settled that where . . . the federal claims are eliminated in the early stages of litigation, courts should generally decline to exercise pendent jurisdiction over remaining state law claims.”).

We have considered plaintiffs’ remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk

[SEAL]

/s/ Catherine O’Hagan Wolfe

App. 7

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

ANTHONY FUTIA, JR., and
ROBERT L. SCHULZ,

Plaintiffs,

20 CIVIL 1237 (VB)

-against-

JUDGMENT

WESTCHESTER COUNTY
BOARD OF LEGISLATORS;
BEN BOYKIN, Chairman;
HARRISON TOWN BOARD; and
RON BELMONT, Supervisor,

(Filed Aug. 7, 2020)

Defendants.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Order dated August 6, 2020, the motions to dismiss are granted; accordingly, this case is closed.

Dated: New York, New York
August 7, 2020

RUBY J. KRAJICK

Clerk of Court

BY: /s/ David J. Thomas

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANTHONY FUTIA, JR., and
ROBERT L. SCHULZ,

Plaintiffs,

**OPINION AND
ORDER**

v.

WESTCHESTER COUNTY
BOARD OF LEGISLATORS;
BEN BOYKIN, Chairman;
HARRISON TOWN BOARD; and
RON BELMONT, Supervisor,

20 CV 1237 (VB)
(Filed Aug. 6, 2020)

Defendants.

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Briccetti, J.:

Plaintiffs Anthony Futia, Jr., and Robert L. Schulz, proceeding pro se, bring this action against defendants Westchester County Board of Legislators (“WCBOL”), WCBOL Chairman Ben Boykin, the Harrison Town (“Town”) Board, and Town Supervisor Ron Belmont, alleging violations of the Guarantee Clause of the U.S. Constitution, the First Amendment, the New York State Constitution, and other state and local laws.

Now pending are defendants’ motions to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6). (Docs. ##11, 15).

For the following reasons, the motions are GRANTED.

BACKGROUND

For the purpose of ruling on the motions to dismiss, the Court accepts as true all well-pleaded factual allegations in the complaint, and draws all reasonable inferences in plaintiffs' favor, as summarized below.¹

Plaintiffs are citizens of New York. At all relevant times, Futia resided in North White Plains, within Westchester County, and Schulz resided in Queensbury, within Warren County.

I. Westchester County Board of Legislators

In 2000, WCBOL enacted Local Law ("L.L.") 24-2000, which created the Compensation Advisory Board ("CAB"). CAB's stated functions include advising WCBOL whether any changes or adjustments to the compensation paid to members of WCBOL is warranted, and submitting recommendations to WCBOL regarding same. Pursuant to L.L. 24-2000, CAB is to

¹ Plaintiffs filed along with their complaint a submission styled "Plaintiffs' Affidavit." (Doc. #2). Annexed to the affidavit are documents discussed in the complaint and referred to therein as exhibits. Although plaintiffs' affidavit is not an allowed pleading, in considering the motions to dismiss, the Court will consider the documents annexed to the affidavit. See Fed. R. Civ. P. 7 (comprising a list of allowed pleadings in federal actions).

Because plaintiffs are proceeding pro se, the Court also considers allegations made for the first time in plaintiffs' opposition to the motion to dismiss. See, e.g., Vlad-Berindan v. MTA N.Y.C. Transit, 2014 WL 6982929, at *6 (S.D.N.Y. Dec. 10, 2014). Moreover, because plaintiffs are proceeding pro se, they will be provided copies of all unpublished opinions cited in this decision. See Lebron v. Sanders, 557 F.3d 76, 79 (2d Cir. 2009).

be comprised of seven members appointed by WCBOL in even-numbered years.

Every two years, a new slate of WCBOL members is elected by Westchester County voters. On November 5, 2019, seventeen individuals were elected to WCBOL for the 2020–2021 term.

On November 18, 2019, WCBOL passed two resolutions scheduling a public hearing to discuss two pieces of proposed legislation: L.L. 12292-2019, to “provide for payments of increased compensation for officers appointed for a fixed term and elective officers during their term of office” (Doc. #1 (“Compl.”) ¶ 20), and L.L. 12294-2019, to increase compensation of the “Members of [WCBOL].” (*Id.*). However, plaintiffs allege WCBOL did not appoint any members to CAB in 2018, and thus CAB was not convened in 2018 or 2019. For this reason, plaintiffs allege CAB did not advise WCBOL in 2019 whether any changes or adjustments to the compensation paid to members of WCBOL was warranted, and therefore did not recommend to WCBOL compensation adjustments for the 2020-2021 term.

On December 3, 2019, at the scheduled public hearing, Futia spoke out against the proposed legislation.

On December 9, 2019, WCBOL passed the legislation. L.L. 12292-2019 made effective salary increases for certain appointed officers and certain elected officers. L.L. 12294-2019, which took effect January 1,

2020—the start of the next term—increased WCBOL members' salaries from \$49,200 to \$75,000.

On January 6, 2020, plaintiffs served WCBOL with a petition, alleging violations of federal and state law in connection with the enactment of the above legislation. (Doc. #2 at ECF 23–25).² The petition demanded WCBOL either repeal the legislation or respond to plaintiffs' complaints. WCBOL did neither.

II. Town Budget

On November 5, 2019, the Town held its general election for the 2020–2021 term. Supervisor Belmont was re-elected, and four other individuals were elected to the Town Board. Supervisor Belmont serves as the fifth and final member of the Town Board.

On November 7, 2019, Supervisor Belmont released the proposed Town budget for 2020, which proposed the same salary for his position as he was paid in 2019. But on November 20, 2019, Supervisor Belmont allegedly updated the proposed budget to include a nearly \$30,000 pay increase for his position. On December 5, 2019, the five-member Town Board unanimously approved the proposed Town Budget, which included the Supervisor's salary increase.

On January 6, 2020, plaintiffs served the Town Board with a petition, alleging violations of federal and state law in connection with the Town Board's

² "ECF __" refers to page numbers automatically assigned by the Court's Electronic Case Filing system.

approval of Supervisor Belmont's salary increase. (Doc. #2 at ECF 40–41). The petition demanded the Town Board repeal and amend the Town budget, or otherwise respond to the petition. The Town Board did not respond to the petition, or repeal and amend the budget.

III. Plaintiffs' Claims

Plaintiffs allege nine causes of action: that (i) WCBOL and Chairman Boykin violated L.L. 24-2000 by increasing WCBOL member compensation without first obtaining an advisory opinion from CAB; (ii) L.L. 12294-2019 is inconsistent with and violates the New York State Constitution; (iii) L.L. 12292-2019 is inconsistent with and violates the New York State Constitution; (iv) WCBOL and Chairman Boykin violated the New York State Constitution by passing the above legislation; (v) the Town's 2020 budget is inconsistent with and violates the New York State Constitution; (vi) the Town Board and Supervisor Belmont violated the New York State Constitution by approving the 2020 budget; (vii) all defendants violated the Guarantee Clause of the U.S. Constitution; (viii) all defendants violated the First Amendment by failing to respond to plaintiffs' petitions for redress; and (ix) all defendants violated Section 801.2 of the New York Education Law.

DISCUSSION

I. Legal Standards

A. Rule 12(b)(1)

“[F]ederal courts are courts of limited jurisdiction and lack the power to disregard such limits as have been imposed by the Constitution or Congress.” Durant, Nichols, Houston, Hodgson & Cortese-Costa, P.C. v. Dupont, 565 F.3d 56, 62 (2d Cir. 2009).³ “A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it.” Nike, Inc. v. Already, LLC, 663 F.3d 89, 94 (2d Cir. 2011). A court lacks the judicial power to hear a party’s claims when the party does not have standing. Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat’l Ass’n, 747 F.3d 44, 48 (2d Cir. 2014). The party invoking the Court’s jurisdiction bears the burden of establishing, by a preponderance of the evidence, that jurisdiction exists. Broidy Capital Mgmt. LLC v. Benomar, 944 F.3d 436, 443 (2d Cir. 2019).

When deciding whether subject matter jurisdiction exists at the pleading stage, the Court “must accept as true all material facts alleged in the complaint.” Conyers v. Rossides, 558 F.3d 137, 143 (2d Cir. 2009). “However, argumentative inferences favorable to the party asserting jurisdiction should not be drawn.” Buday v. N.Y. Yankees P’ship, 486 F. App’x 894, 895 (2d Cir. 2012) (summary order). When a factual challenge

³ Unless otherwise indicated, case quotations omit all internal citations, quotations, footnotes, and alterations.

to the Court's jurisdiction has been raised, "the court may resolve [any] disputed jurisdictional fact issues by referring to evidence outside of the pleadings." Zappia Middle E. Constr. Co. v. Emirate of Abu Dhabi, 215 F.3d 247, 253 (2d Cir. 2000).

When a defendant moves to dismiss for lack of subject matter jurisdiction and on other grounds, the court should resolve the Rule 12(b)(1) challenge first. Rhulen Agency, Inc. v. Ala. Ins. Guar. Ass'n, 896 F.2d 674, 678 (2d Cir. 1990).

B. Rule 12(b)(6)

In deciding a Rule 12(b)(6) motion, the Court evaluates the sufficiency of the operative complaint under the "two-pronged approach" articulated by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). First, a plaintiff's legal conclusions and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678; Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. at 679.

To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." Ashcroft v. Iqbal, 556 U.S. at 678; Bell Atl. Corp. v. Twombly, 550 U.S. 544, 564 (2007). A claim is facially

plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting Bell Atl. Corp. v. Twombly, 550 U.S. at 556).

In considering a motion to dismiss, “a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint.” DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010).

The Court must liberally construe submissions of pro se litigants and interpret them “to raise the strongest arguments that they suggest.” Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam). “Even in a pro se case, however, . . . threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Chavis v. Chappius, 618 F.3d 162, 170 (2d Cir. 2010). Nor may the Court “invent factual allegations” a plaintiff has not pleaded. Id.

II. Individual Defendants

Defendants argue plaintiffs’ claims against Chairman Boykin should be dismissed on grounds of legislative immunity and qualified immunity, and plaintiffs’ claims against Supervisor Belmont should

be dismissed as duplicative of claims asserted against the Town Board. In their opposition to defendants' motions to dismiss, plaintiffs state they did not "inten[d] to include Ben Boykin and Ron Belmont as additional defendants, separate from the named governing entities." (Doc. #26 ("Pls. Mem.") at 13).

Accordingly, the Court dismisses plaintiffs' claims insofar as they are pleaded against Chairman Boykin or Supervisor Belmont.

III. Subject Matter Jurisdiction

Defendants argue plaintiffs lack standing to bring their claims, and thus the Court lacks subject matter jurisdiction over such claims.

The Court agrees with respect to plaintiffs' claims against the Town Board, and that Schulz lacks standing to bring claims against WCBOL. However, the Court disagrees with defendants as to Futia's claims against WCBOL.

A. Standing

"The 'irreducible constitutional minimum' of standing in federal court requires: (1) 'injury in fact'; (2) that is 'fairly traceable' to a defendant's challenged conduct; and (3) that is 'likely to be redressed' by a favorable decision." Mejia v. Time Warner Cable Inc., 2017 WL 3278926, at *7 (S.D.N.Y. Aug. 1, 2017) (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)). "To support standing, an injury must be both

‘concrete and particularized.’” Id. (quoting Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016)). “A ‘bare’ statutory violation is insufficient to confer constitutional standing absent some ‘concrete’ harm.” Id. (citing Spokeo, Inc. v. Robins, 136 S. Ct. at 1549).

Beyond those constitutional requirements, there are certain court-imposed limits to invoking the jurisdiction of the federal courts. Generally, a plaintiff may assert only his own rights. Warth v. Seldin, 422 U.S. 490, 499 (1975) (“A federal court’s jurisdiction . . . can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action.”). Specifically, “[t]he plaintiff must (1) be asserting [his] own legal rights, and not those of a third party, (2) be asserting, in addition to a redressable injury, a particularized grievance, and (3) be asserting a claim that falls within that zone of interests the statute aims to protect or regulate.” Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 58 (2d Cir.1994).

B. Town Board

Plaintiffs cannot establish standing to maintain their claims against the Town Board because they have not suffered an injury in fact fairly traceable to the Town Board’s approval of the 2020 budget.

As a preliminary matter, a plaintiff’s federal or state taxpayer status generally is insufficient to establish Article III standing. See ASARCO Inc. v. Kadish, 490 U.S. 605, 613 (1989) (citing Massachusetts v.

Mellon, 262 U.S. 447, 487 (1923)) (“[S]uits premised on federal taxpayer status are not cognizable in the federal courts because a taxpayer’s interest in the moneys of the Treasury . . . is shared with millions of others, is comparatively minute and indeterminable,” and thus provides “no basis . . . for judicial intervention.”); see also DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 345 (2006) (noting the “rationale for rejecting federal taxpayer standing applies with undiminished force to state taxpayers”).

However, a municipal taxpayer with a sufficiently “direct and immediate” relationship with the municipality has “standing to challenge allegedly unlawful municipal expenditures” involving “measurable appropriation or loss of revenue.” Bd. of Educ. Mt. Sinai Union Free Sch. Dist. v. N.Y.S. Teachers Ret. Sys., 60 F.3d 106, 110–111 (2d Cir. 1995). Municipal taxpayer standing is not applicable, however, when the plaintiff is not a taxpayer of the municipality against which his claims are brought. See, e.g., Altman v. Bedford Cent. Sch. Dist., 245 F.3d 49, 73–74 (2d Cir. 2001) (holding plaintiffs who did not live in the school district lacked standing to bring claims against the district); Gheta v. Nassau Cty. Cmty. Coll., 33 F. Supp. 2d 179, 183 (E.D.N.Y. 1999) (holding a plaintiff lacked standing because she was “no longer a resident of” the municipality).

Here, plaintiffs’ federal or state taxpayer status is insufficient to establish standing to maintain claims

against the Town Board.⁴ In addition, plaintiffs are not Town residents, and do not plausibly allege a “direct and immediate” relationship with the municipality. See Bd. of Educ. Mt. Sinai Union Free Sch. Dist. v. N.Y.S. Teachers Ret. Sys., 60 F.3d at 110. Accordingly, plaintiffs cannot demonstrate an injury in fact with respect to the Town Board’s 2020 budget approval, and therefore cannot meet the irreducible constitutional minimum of standing in federal court with respect to their claims against the Town Board. See Altman v. Bedford Cent. Sch. Dist., 245 F.3d at 73.

For the above reasons, plaintiffs lack standing to maintain their claims against the Town Board, and therefore such claims must be dismissed.⁵

C. WCBOL

Schulz cannot establish standing to maintain claims against WCBOL because he is not a resident of Westchester County and has not suffered an injury in fact fairly traceable to L.L. 12992-2019 and L.L.

⁴ To the extent plaintiffs suggest they have standing because “the Town of Harrison will receive State taxpayer funds from N.Y. State in 2020 that will be co-mingled with Town-generated funds in its general fund,” such allegation is conclusory and fails to establish standing. (See Compl. ¶ 32).

⁵ The Town Board also moves under Rule 12(b)(7) to dismiss the complaint for failure to join a necessary party. (See Doc. #13 at 9) (“Because the Town Board is merely an administrative arm of the Town that cannot sue or be sued, the Complaint against it must be dismissed.”). However, because the Court is dismissing plaintiffs’ claims against the Town Board, it need not separately address the Rule 12(b)(7) argument.

12994-2019. However, at this early stage of proceedings, Westchester County resident Futia alleges an injury fairly traceable to the legislation.

1. Schulz

Schulz is not a resident of Westchester County, and does not allege a connection with Westchester County or WCBOL sufficient to confer standing to challenge WCBOL's enactment of L.L. 12292-2019 and L.L. 12294-2019, or WCBOL's alleged failure to respond to plaintiffs' petition. Moreover, as with plaintiffs' claims against the Town Board, Schulz cannot rely on federal or state taxpayer status to establish standing to maintain claims against WCBOL.⁶

Accordingly, Schulz lacks standing to maintain claims against WCBOL.⁷

2. Futia

Futia resides in Westchester County and asserts he is a "Westchester County taxpayer." (Pls. Mem. at 11). He claims WCBOL improperly raised board

⁶ Here, again, plaintiffs cannot sufficiently demonstrate standing by pleading in conclusory fashion that "Westchester County will receive State taxpayer funds from N.Y. State in 2020 that will be co-mingled with [C]ounty-generated taxpayer funds in its general fund." (Compl. ¶ 25).

⁷ Because Schulz lacks standing to maintain claims against WCBOL and, as noted above, the Town Board, all of plaintiffs' claims must be dismissed insofar as they are pleaded on behalf of Schulz.

member compensation without first having solicited advice or a recommendation from CAB as to same.

At this stage of the proceedings, Futia's claims demonstrate an alleged "measurable appropriation or loss of revenue" bearing on his direct and immediate relationship with the municipality. See Bd. of Educ. Mt. Sinai Union Free Sch. Dist. v. N.Y.S. Teachers Ret. Sys., 60 F.3d at 111. Accordingly, the Court declines to dismiss Futia's claims for lack of subject matter jurisdiction, and will assess whether Futia has plausibly alleged any claims over which this Court has original jurisdiction.

IV. Guarantee Clause Claim⁸

Futia claims WCBOL's enactment of L.L. 12292-2019 and L.L. 12294-2019 denied Futia his constitutional right to a government republican in form, in derogation of the Guarantee Clause of the U.S. Constitution. WCBOL argues Futia fails plausibly to state claim premised on WCBOL's alleged violation of the Guarantee Clause because such claim is nonjusticiable.

The Court agrees with WCBOL.

⁸ Courts have referred to Article IV, Section 4 of the U.S. Constitution as both the "Guarantee Clause" and the "Guaranty Clause." See U.S. ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County, 712 F.3d 761, 775 (2d Cir. 2013); Padavan v. United States, 82 F.3d 23, 28 (2d Cir. 1996).

Article IV, Section 4 of the U.S. Constitution provides in pertinent part: “The United States shall guarantee to every State in this Union a Republican Form of Government.”

“Although it is ‘the province and duty of the judicial department to say what the law is,’ there are instances where ‘the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights’; such a claim ‘is said to present a “political question” and to be non-justiciable—outside the courts’ competence and therefore beyond the courts’ jurisdiction.’” Schulz v. New York, 2019 WL 3975670, at *5 (N.D.N.Y. Aug. 22, 2019) (quoting Rucho v. Common Cause, 139 S. Ct. 2484, 2494 (2019)).

Challenges to state action premised on violations of the Guarantee Clause traditionally present nonjusticiable political questions. Rucho v. Common Cause, 139 S. Ct. at 2506 (“The Court has several times concluded . . . that the Guarantee Clause does not provide the basis for a justiciable claim.”); see also Baker v. Carr, 369 U.S. 186, 228–29 (1962). Moreover, the Second Circuit has concluded a challenge under the Guarantee Clause to certain municipal conduct presents a nonjusticiable issue when the “residents of the County remain able to choose their own officers and pass their own laws.” U.S. ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County, 712 F.3d at 775.

Futia fails plausibly to state a justiciable Guarantee Clause claim. He fails adequately to allege voters of Westchester County were, or continue to be, deprived of their ability to choose their own representatives and pass their own laws, and thus have been deprived of a government republican in form. Simply put, his distaste for certain legislation, alone, does not give rise to a justiciable constitutional claim. Further, “while it is possible that ‘perhaps not all claims under the Guarantee Clause present nonjusticiable political questions,’” Padavan v. United States, 82 F.3d at 28 (quoting New York v. United States, 505 U.S. 144, 185 (1992)), the complaint in this action is devoid of any indicia of a justiciable Guarantee Clause claim.

Accordingly, Futia’s Guarantee Clause claim must be dismissed.

V. First Amendment Claim

WCBOL argues Futia fails plausibly to allege a First Amendment claim because the constitutional right to petition the government does not include a right to a response.

The Court agrees.

“The First Amendment protects a right to . . . petition the government for the redress of grievances.” Ayala-Rosario v. Westchester County, 2020 WL 3618190, *5 (S.D.N.Y. July 2, 2020).

However, [t]he right to petition in general guarantees only that individuals have a right to communicate

directly to government officials. . . . It does not guarantee, as plaintiff contends, . . . that an elected official will necessarily act a certain way or respond in a certain manner to requests from his constituents.” Kittay v. Giuliani, 112 F. Supp. 2d 342, 354 (S.D.N.Y. 2000) (citing Minn. State Bd. for Cmty. Colls. v. Knight, 465 U.S. 271, 285 (1984)). Indeed, “[n]othing in the First Amendment or in [the Supreme] Court’s case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals’ communications on public issues.” Minn. State Bd. for Cmty. Colls. v. Knight, 465 U.S. at 285; see also Smith v. Ark. State Highway Emps., Local 1315, 441 U.S. 463, 465 (1979) (noting “the First Amendment does not impose any affirmative obligation on the government to listen, [or] to respond.”).

Here, Futia exercised his right to petition WCBOL to redress his grievances when, on December 3, 2019, he spoke out at a public hearing respecting L.L. 12292-2019 and L.L. 12294-2019, and again on January 6, 2020, when he submitted a written petition to WCBOL. As Futia “does not allege [WCBOL] prevented him from communicating any grievance,” see Kittay v. Giuliani, 112 F. Supp. 2d at 354, he fails plausibly to allege WCBOL violated his constitutional right to petition the government.

Accordingly, Futia’s First Amendment claim must be dismissed.

VI. State Law Claims

A district court may decline to exercise supplemental jurisdiction over state law claims when it “has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3); Kolari v. New York-Presbyterian Hosp., 455 F.3d 118, 122 (2d Cir. 2006).

Having dismissed the federal claims over which the Court has original jurisdiction, the Court declines to exercise its supplemental jurisdiction over Schulz’s and Futia’s state law claims.

VII. Leave to Amend

Rule 15(a)(2) of the Federal Rules of Civil Procedure instructs that courts “should freely give leave” to amend a complaint “when justice so requires.” Liberal application of Rule 15(a) is warranted with respect to pro se litigants, who “should be afforded every reasonable opportunity to demonstrate that [they have] a valid claim.” Matima v. Celli, 228 F.3d 68, 81 (2d Cir. 2000). District courts “should not dismiss [a pro se complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000).

However, leave to amend may “properly be denied for . . . ‘futility of amendment.’” Ruotolo v. City of New York, 514 F.3d 184, 191 (2d Cir. 2008) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). This is true even when a plaintiff is proceeding pro se. See Terry v. Incorporated Village of Patchogue, 826 F.3d 631, 633 (2d

Cir. 2016). An amendment to a pleading is futile if the Court would lack subject matter jurisdiction over the proposed claim, see Mortimer Off Shore Serves, Ltd., v. Federal Republic of Germany, 615 F.3d 97, 99 (2d Cir. 2010), cert. denied, 562 U.S. 1249 (2011), or “if the proposed claim could not withstand a motion to dismiss pursuant to [Rule] 12(b)(6).” Lucente v. Int’l Bus. Machs. Corp., 310 F.3d 243, 258 (2d Cir. 2002).

Here, plaintiffs’ submissions, even liberally construed, contain no allegations suggesting plaintiffs have actionable claims against defendants that plaintiffs “inadequately or inartfully pleaded” and “should therefore be given a chance to reframe.” See Cuoco v. Moritsugu, 222 F.3d at 112. The problems with plaintiffs’ federal claims are substantive, and better pleading will not cure them. For these reasons, amendment would be futile.

CONCLUSION

The motions to dismiss are GRANTED.

The Clerk is instructed to terminate the motions (Docs. ##11, 15) and close this case.

Dated: August 6, 2020
White Plains, NY

SO ORDERED:

/s/ Vincent L. Briccetti
Vincent L. Briccetti
United States District Judge

APPENDIX C

Sec. 570.2. – Compensation Advisory Board.

1.

There shall be a Compensation Advisory Board consisting of seven members. Two members shall be appointed by the Majority Leader of the County Board of Legislators; two members shall be appointed by the minority Leader of the County Board of Legislators; and three members shall be appointed by the Chair of the County Board of Legislators, one of whom shall be designated by the Chair of the County Board of Legislators as the Chair of the Compensation Advisory Board. All Appointments shall be subject to confirmation by the County Board of Legislators. All appointments shall be made following the organizational meeting of the County Board of Legislators in January of even-numbered years. All members shall serve from the date of appointment to April 30th of the year in which the appointment was made.

The Compensation Advisory Board shall advise the Board of Legislators whether any changes or adjustments to the compensation paid to members of the Board of Legislators is warranted. If the Compensation Advisory Board recommends that there be changes or adjustments to the compensation paid to members of the Board of Legislators, then the Compensation Advisory Board shall recommend the amount of compensation for all members of the Board of Legislators, including leadership stipends, if any, provided to

App. 28

the Board Chair, Vice-Chair, Majority and Minority leaders and whips, and chairs of committees.

The Compensation Advisory Board shall meet promptly after a majority of its members have been appointed and shall meet thereafter as frequently as necessary to accomplish the work of the board.

The Compensation Advisory Board shall submit in writing its recommendations regarding whether any compensation changes or adjustments are warranted and the recommended rates of compensation, if appropriate, to the Board of Legislators, no later than April 30th of each even-numbered year.

The members of the Compensation Advisory Board shall serve without compensation but shall be entitled to receive all reasonable expenses actually incurred in the performance of their duties.

(Added by L.L. No. 24-2000¹)

¹ Section 2 of this local law was amended 5-10-2010 by L.L. No. 2-2010 to provide that the law shall take effect 1-1-2001, but shall not be effective during the year 2010, and was amended 4-16-12 by L.L. No. 8-2012 to provide, that it shall not be effective during the year 2012.

APPENDIX D

**PETITION TO THE MEMBERS OF THE
BOARD OF LEGISLATORS OF WESTCHESTER
COUNTY, NEW YORK FOR REDRESS OF
VIOLATIONS OF ARTICLE IX OF THE
NEW YORK STATE CONSTITUTION
AND EXISTING LAW**

A. Facts Material to this Petition for Redress

1. The Westchester County Board of Legislators is comprised of seventeen members who are elected at a general election every two-years.
2. The 2018-2019 Westchester County Board of Legislators violated existing law by not convening and appointing members to the “Westchester County Compensation Advisory Board” in January of 2018.
3. On November 5, 2019, seventeen men and women were elected to the Westchester County Board of Legislators for the 2020-2021 term.
4. On November 18, 2019, by unanimous vote, the County Board of Legislators adopted Resolution 2019-231, scheduling a public hearing on December 3, 2019 on a proposed Local Law Intro No. ____-2019 entitled, “A LOCAL LAW subject to a permissive referendum to provide for payments of increased compensation for officers appointed for a fixed term and elective officers during their term of office.”
5. On November 18, 2019, by unanimous vote, the County Board of Legislators adopted Resolution 2019-232, scheduling a public hearing on

December 3, 2019 on Local Law Intro No. ____-2019 entitled, "A LOCAL LAW . . . regarding Compensation of the Members of the County Board of Legislators."

6. On December 3, 2019, the County Board of Legislators held a public hearing on said proposed Local Laws, during which Mr. Anthony Futia Jr. spoke in opposition.
7. On December 9, 2019, the County Board of Legislators adopted Local Law 12294-2019 entitled "A LOCAL LAW . . . regarding Compensation of the Members of the County Board of Legislators," which increased the compensation of each member of the Board of Legislators "with respect the term for which he or she shall have been elected." See Exhibit A.
8. On December 9, 2019, the County Board of Legislators adopted Local Law 12292-2019 entitled, "A LOCAL LAW subject to a permissive referendum to provide for payments of increased compensation for officers appointed fixed term and elective officers during their term of office," which increased the compensation of appointed and elective officers "with respect to, the term for which he or she shall have been elected." See Exhibit B.
9. Local Laws 12292-2019 and 12294-2019 violate Article IX, Section 2(c)(1) of the New York State Constitution which prohibits the Board of Legislators from adopting local laws that are "inconsistent" with any provision of the New York State Constitution, including Article III, Section 6 which reads in part, "Neither the salary of any member nor any other allowance so fixed may be increased

or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation.”

10. Westchester County will receive funds from N.Y. State in 2020 that will be co-mingled with county generated funds in its general fund.
11. Article IV, Section 4 of the United States Constitution guarantees the People of the State of New York a “Republican Form of Government.”
12. The Petition clauses of the United States Constitution (Bill of Rights. Amendment) and New York State Constitution (Bill of Rights, Section 9) obligate the Government, including the Executive and Legislative, to provide a meaningful response to a Petition for Redress of its violation of the Rule of Law, including the State and Federal Constitutions and laws pursuant thereto.

B. Relief Requested

Pursuant to the historical scope and purpose of the Petition Clause of the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the Constitution for the State of New York, the Westchester County Board of Legislators is requested to immediately respond to this Petition for Redress by either repealing Local Law 12292-2019 and Local Law 12294-2019 or by providing the undersigned with a written document in which it proves petitioners’ facts wrong by argument or evidence, in which case the Coo requested to refrain from providing increases in

App. 32

compensation pursuant to Local 12292-2019 and Local Law 12294-2019 until the grievance is redressed.

Dated: January 6, 2020

/s/ Anthony Futia, Jr.
Anthony Futia, Jr.
34 Custis Ave.
N. White Plains, NY
10603

/s/ Robert L. Schulz
Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

NEW YORK STATE CONSTITUTION

ARTICLE I: Bill of Rights

§9. 1. No law shall be passed abridging the rights of the people . . . to petition the government.

ARTICLE IX: Local Governments

§2. (c) In addition to powers granted in the statute of local governments or any other law. (i) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government: (emphasis added).

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, **compensation**, hours of work, protection, welfare and safety of its officers and employees. except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. (emphasis added).

ARTICLE III: Legislature

[§6. Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. **Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation.** The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section,

EXHIBIT A

LOCAL LAW INTRO NO. 12294-2019

A LOCAL LAW to Amend Section 209.41 of the Laws of Westchester County regarding Compensation of the Members of the County Board of Legislators

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Subdivision I of Section 209.41 of the Laws of Westchester County, is hereby amended to read as follows:

1. Each member shall receive, as compensation for his or her services as county legislator, a salary of ~~[\$49,200.00]~~ \$75,000.00 per annum, to be paid by the Commissioner of Finance as other county salaries are paid. No county legislator shall receive any other or greater sum for his services except as may be provided either by the County Charter or this chapter. 2. The Chairman of the County Board may be paid such additional amounts as compensation for his services while acting in such capacity and while acting as a member of the Board of Acquisition and Contract as the County Board shall determine. 3. The Vice Chairman, the majority and minority leaders, the majority and minority whips, the chairs of each special committee and the chairs of each standing committee of the County Board may be paid an additional amount as compensation for their services while acting in such

App. 38

capacity as the County Board shall determine.4. Such additional amounts paid to the Chairman and Vice Chairman of the County Board, to the majority and minority leaders and to the chairman of each standing and special committee shall be in addition to any and all committee fees they are entitled to pursuant to law.

Section 2. This Local Law shall take effect January 1, 2020.

EXHIBIT B

LOCAL LAW INTRO NO. 12292-2019

A LOCAL LAW subject to a permissive referendum to provide for payments of increased compensation for officers appointed for a fixed term and elective officers during their term of office.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section I. The salary plan as amended by the Act that has been adopted recently (a copy of which is annexed hereto and incorporated herein by reference) is hereby made applicable to officers appointed for a fixed term and elective officers during their term of office.

Section 2. This local law shall be implemented in accordance with the aforementioned Act.

Section 3. The Clerk of the Board shall cause a notice of this local law to be published at least once a week for two successive weeks, the first publication of which shall be had within ten days after such local law is adopted in one or more newspapers published in the County of Westchester, selected by the Clerk for that purpose. Said notice shall contain the number, date of adoption and a true copy of this local law and a statement that so much of this local law that increases the salary of: (1) officers appointed for a fixed term during the term of office of such officer is subject to a permissive referendum pursuant to the provisions of Section

App. 40

24, subdivision 2, clause h of New York Municipal Home Rule Law, and (2) elected officers during their term of office is subject to a permissive referendum pursuant to Sections 209.171(8) and 209.181 of the Laws of Westchester County.

Section 4. This local law shall take effect forty-five days after its adoption insofar as it applies to officers appointed for a fixed term, provided however that this local law shall take effect sixty days after its adoption insofar as it applies to elected officials.

ACT 237 - 2019

AN ACT amending Act No. 264952 as amended, which amended Act No. 40-1941, entitled "An Act establishing personnel rules in Westchester County service and adopting classification of positions and schedules of pay."

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. SCHEDULE "A" Allocation of Titles of Positions to Job Groups, appended to Act No. 26-1952, as heretofore amended, is hereby further amended by **deleting** the following titles from the Job Groups indicated:

JOB GROUP I	NONE
JOB GROUP II	NONE
JOB GROUP III	NONE
JOB GROUP IV	NONE
JOB GROUP V	NONE
JOB GROUP VI	NONE
JOB GROUP VII	NONE
JOB GROUP VIII	NONE
JOB GROUP IX	NONE

App. 42

JOB GROUP X	Code Enforcement Officer (Schedule B-1)
JOB GROUP XI	NONE
JOB GROUP XII	NONE
JOB GROUP XIII	NONE
JOB GROUP XIV	NONE
JOB GROUP XV	Deputy Director of Consumer Protection and Sealer of Weights and Measures (Schedule B-4) Chairman-Westchester County Taxi & Limousine Commission (Schedule B4)
JOB GROUP XVI	Deputy Commissioner of Elections (Schedule B-4) Director of Consumer Protection (Schedule B-4) Director of Tourism (Schedule B-4) Director – Youth Bureau (Schedule B-4)
JOB GROUP XVII	First Deputy Commissioner of Finance (Schedule B-4) Deputy Chief Information Officer (Schedule B-4) Deputy Commissioner of Planning (Schedule B-4) Deputy Commissioner of Public Works & Transportation (Schedule B-4)

App. 43

JOB GROUP XVIII Deputy Budget Director
 (Schedule B-4)
 First Deputy Commissioner of
 Public Works & Transportation
 (Schedule B-4)
 First Deputy Commissioner of
 Social Services (Schedule B-4)

JOB GROUP XIX NONE

JOB GROUP XX NONE

Section 2. SCHEDULE "A" Allocation of Titles of Positions to Job Groups, appended to ACT No. 26-192, as heretofore amended, is hereby further amended by **adding** the following titles to the Job Groups indicated:

JOB GROUP I NONE

JOB GROUP II NONE

JOB GROUP III NONE

JOB GROUP IV NONE

JOB GROUP V NONE

JOB GROUP VI Emergency Communication
 Specialist Trainee (Schedule B-1)

JOB GROUP VII NONE

JOB GROUP VIII Emergency Communication
 Specialist I (Schedule B-1)

JOB GROUP IX Emergency Communication
 Specialist II (Schedule B-1)
 Secretary to the Director of
 Consumer Protection (Schedule
 B-1)

App. 44

	Secretary to the Executive Director of the Solid Waste Commission (Schedule B-1) Secretary to the Executive Director of the Human Rights Commission (Schedule B-1) Secretary to the Executive Director of the Tax Commission (Schedule B-1)
JOB GROUP X	NONE
JOB GROUP XI	NONE
JOB GROUP XII	Assistant to Commissioner (Group of Classes) (Schedule B-4)
JOB GROUP XIII	NONE
JOB GROUP XIV	Code Enforcement Officer (Schedule B-1)
JOB GROUP XV	NONE
JOB GROUP XVI	NONE
JOB GROUP XVII	Deputy Director of Consumer Protection and Sealer of Weights and Measures (Schedule B-4)
JOB GROUP XVIII	Chairman-Westchester County Taxi & Limousine Commission (Schedule B-4) Deputy Chief Information Officer (Schedule B-4) Deputy Commissioner of Elections (Schedule B-4) Deputy Commissioner of

App. 45

	Planning (Schedule B-4)
	Deputy Commissioner of
	Public Works & Transportation
	(Schedule B-4) Chief Adminis-
	trator-Probation (Schedule B-4)
	Director of Tourism
	(Schedule B-4)
	Director Youth Bureau
	(Schedule B-4)
	First Deputy Commissioner of
	Finance (Schedule B-4)
JOB GROUP XIX	Deputy Budget Director
	(Schedule B-4)
	Director of Consumer Protection
	(Schedule B-4)
	First Deputy Commissioner of
	Corrections (Schedule B-4)
	First Deputy Commissioner of
	Environmental Facilities
	(Schedule B-4)
	First Deputy Commissioner of
	Public Works & Transportation
	(Schedule B-4)
	First Deputy Commissioner of
	Social Services (Schedule B-4)
	Senior Assistant to County
	Executive III (Schedule B-4)
JOB GROUP XX	NONE

Section 3. Subject to any restriction imposed by law, Schedule B-4 Salary Plan titles and rates or pay for positions covered by the Non-Represented Management Salary Plan appended to Act No. 26-1952 as heretofore amended, is hereby further amended to read as follows:

Schedule "B": Positions covered by the
Non-Represented/Management Salary Plan

**Schedule B-4
Effective January 1, 2019**

<i>Group</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
<i>E10</i>	\$ 58,800.00	\$ 62,395.00	\$ 65,960.00	\$ 69,550.00 ¹	\$ 73,125.00
<i>E11</i>	\$ 62,880.00	\$ 69,715.00	\$ 73,185.00	\$ 78,290.00	\$ 83,500.00
<i>E12</i>	\$ 69,830.00	\$ 75,650.00	\$ 81,475.00	\$ 87,285.00 ¹	\$ 93,090.00
<i>E13</i>	\$ 77,390.00	\$ 83,740.00	\$ 90,150.00	\$ 96,520.00	\$102,215.00
<i>E14</i>	\$ 85,640.00	\$ 92,730.00	\$ 99,560.00	\$105,600.00	\$111,690.00
<i>E15</i>	\$ 94,905.00	\$102,020.00	\$108,735.00	\$115,435.00 ¹	\$122,110.00
<i>E16</i>	\$103,565.00	\$110,990.00	\$118,430.00	\$125,845.00	\$133,240.00
<i>E17</i>	\$111,600.00	\$119,510.00	\$127,445.00	\$135,070.00	\$142,380.00
<i>E18</i>	\$120,350.00	\$129,305.00	\$137,745.00	\$145,860.00	\$153,700.00
<i>E19</i>	\$129,550.00	\$139,015.00	\$148,015.00	\$156,885.00	\$165,730.00

Schedule B-4
Effective January 1, 2020

<i>Group</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
<i>E10</i>	\$ 65,860.00	\$ 69,890.00	\$ 73,875.00	\$ 77,915.00	\$ 81,910.00
<i>E11</i>	\$ 70,430.00	\$ 78,085.00	\$ 81,975.00	\$ 87,685.00	\$ 93,535.00
<i>E12</i>	\$ 78,215.00	\$ 84,735.00	\$ 91,260.00	\$ 97,780.00	\$104,270.00
<i>E13</i>	\$ 86,695.00	\$ 93,795.00	\$ 100,970.00	\$ 108,120.00	\$114,490.00
<i>E14</i>	\$ 95,930.00	\$ 103,870.00	\$ 111,515.00	\$ 118,285.00	\$125,100.00
<i>E15</i>	\$ 106,295.00	\$ 114,275.00	\$ 121,800.00	\$ 129,290.00	\$136,775.00
<i>E16</i>	\$ 116,005.00	\$ 124,320.00	\$ 132,645.00	\$ 140,950.00	\$149,240.00
<i>E17</i>	\$ 124,285.00	\$ 134,250.00	\$ 144,275.00	\$ 153,890.00	\$163,100.00
<i>E18</i>	\$ 135,315.00	\$ 146,605.00	\$ 157,260.00	\$ 167,490.00	\$177,385.00
<i>E19</i>	\$ 146,930.00	\$ 158,860.00	\$ 170,225.00	\$ 181,415.00	\$192,560.00

Section 4. Pursuant to Section 4 of Act No. 85-1988, the positions covered by the District Attorney Salary Plan (Schedule B-10) are increased as follows:

**District Attorney Salary Plan
Effective January 1, 2019**

Group	Minimum	Maximum
Junior Assistant District Attorney	\$ 65,132.00	\$ 72,988.00
Assistant District Attorney	\$ 80,165.00	\$ 120,767.00
Senior Assistant District Attorney	\$ 119,520.00	\$ 124,677.00
Deputy Chief of Bureau-District Attorney	\$ 129,702.00	\$ 145,448.00
Chief Bureau-District Attorney	\$ 153,925.00	\$ 163,040.00
Deputy District Attorney	\$ 157,650.00	\$ 165,580.00
Second Deputy District Attorney	\$ 168,557.00	\$ 173,605.00
First Deputy District Attorney	\$ 175,966.00	\$ 184,083.00

**District Attorney Salary Plan
Effective January 1, 2020**

Group	Minimum	Maximum
Junior Assistant District Attorney	\$ 68,389.00	\$ 76,637.00
Assistant District Attorney	\$ 84,173.00	\$ 126,805.00
Senior Assistant District Attorney	\$ 125,496.00	\$ 130,911.00

App. 49

Deputy Chief of Bureau-District Attorney	\$ 136,187.00	\$ 152,720.00
Chief of Bureau-District Attorney	\$ 161,621.00	\$ 171,192.00
Deputy District Attorney	\$ 165,533.00	\$ 173,859.00
Second Deputy District Attorney	\$ 176,985.00	\$ 182,285.00
First Deputy District Attorney	\$ 184,764.00	\$ 193,287.00

Section 5. SCHEDULE "C" Titles and rates of pay for positions not allocated to job Groups. Appended to Act No. 26-1952 as amended by Act No. 215-1999 is hereby further amended by

Deleting:

County Legislator \$49,200 annually

Adding (Effective January 1, 2020): \$75,000 annually

County Legislators

Section 6. SCHEDULE "C" Titles and rates of pay for positions not allocated to Job Groups. Appended to Act No. 26-1952 as amended by Acts No. 6-1974, No. 65-1995, No. 18-1999, and No. 264-2005 is hereby further amended by deleting any existing stipends for the Board of Legislators and adding the following, **effective January 1, 2020:**

Chairman	\$45,000 per annum
Vice Chairman	\$12,000 per annum
Majority Leader	\$12,000 per annum
Minority Leader	\$12,000 per annum
Majority Whip	\$6,000 per annum

App. 50

Minority Whip	\$6,000 per annum
Budget & Appropriations Chair	\$12,000 per annum
Legislation Chair	\$12,000 per annum
Committee Chair	\$3,000-\$6,000 per annum
Special Committee Chairs	\$2,500-\$4,000 per annum

Section 7. SCHEDULE "C" Titles and rates of pay for positions not allocated to Job Groups. Appended to Act No. 26-1952, as heretofore amended, is hereby further amended by **adding**:

	<u>Annual Flat Rates</u> <u>Not to Exceed:</u>	
	<u>Effective</u> <u>1/1/2019</u>	<u>Effective</u> <u>1/1/2020</u>
Budget Director	\$175,000	\$195,000
Chief Advisor to the County Executive	\$175,000	\$195,000
Chief Information Officer	\$175,000	\$195,000
Commissioner Community Mental Health	\$175,000	\$195,000
Commissioner of Correction	\$175,000	\$195,000
Commissioner of Elections	\$175,000	\$195,000
Commissioner of Emergency Services	\$175,000	\$195,000
Commissioner of Environ- mental Facilities	\$175,000	\$195,000
Commissioner of Finance	\$175,000	\$195,000
Commissioner of Health	\$210,000	\$230,000

App. 51

Commissioner of Human Resources	\$175,000	\$195,000
Commissioner of Parks Recreation & Conservation	\$175,000	\$195,000
Commissioner of Planning	\$175,000	\$195,000
Commissioner of Public-Works & Transportation	\$175,000	\$195,000
Commissioner of Social Services	\$175,000	\$195,000
Commissioner of Senior Programs & Services	\$175,000	\$195,000
Commissioner/Sheriff	\$205,000	\$225,000
Commissioner of Probation	\$175,000	\$195,000
County Attorney	\$175,000	\$195,000
County Clerk	\$175,000	\$195,000
County Executive (\$160,760)	No Increase	No Increase
Director of Communications	\$175,000	\$195,000
Director of Economic Development	\$175,000	\$195,000
Director of Real Estate	\$175,000	\$195,000
Deputy County Executive	\$177,125	\$197,125
Pathologist-Deputy Medical Examiner	\$210,000	\$230,000
Pathologist – Medical Examiner	\$225,000	\$245,000

Section 8. SCHEDULE “C” Allocation of Titles of Positions to Job Groups, appended to Act No. 26-1952, as heretofore amended, is hereby further amended by **deleting** the following titles:

App. 52

Pathologist	Flat Rate Not to Exceed \$480/day
EMD Certification stipend (For the Communication Operator and Senior Communication Operator titles in the Department of Emergency Services)	\$2500 annually

Section 9. SCHEDULE "C" Allocation of Titles of Positions to Job Groups, appended to ACT No. 26-1952, as heretofore amended, is hereby further amended by **adding** the following title:

Effective January 1, 2020

Pathologist I	Flat Rate Not to Exceed \$1500/case or \$500 for 24-hour on-call assignment
---------------	-----------------------------------------------------------------------------

Section 10. The salary of any individual may not increase more than \$10,000 in any one year, exclusive of any change in pay grade and/or any generic salary plan increase.

Section 11. To implement the revisions and amendments to the pay plan incorporated in this Act transfers of appropriations between general classifications of expenditures within the same department are hereby authorized upon the recommendation of the Budget Director and the authorization of the County Executive, and transfers of appropriations between departments are hereby authorized upon the recommendation of the County Executive.

Section 12. Unless otherwise noted herein, this Act shall take effect on January 1, 2019, and to the extent

that this Act authorizes the increase of compensation of officers appointed for a fixed term and the increase of the compensation of elected officials, those provisions shall not take effect during their current term of office unless and until such an increase is authorized by a local law subject to a permissive referendum as follows: (1) for officers appointed for a fixed term to receive an increase during the current term of office of such officer, a permissive referendum pursuant to the provisions of Section 24, subdivision 2, clause h of New York Municipal Home Rule Law, and (2) for elected officers to receive an increase during their current term of office, a permissive referendum pursuant to Sections 209.171(8) and 209.181 of the Laws of Westchester County.

STATE OF NEW YORK)
) ss.
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Act, Act No. 237 - 2019, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on November 18, 2019, and deemed approved without the County Executive's signature in accordance with Section 107.71 of the Westchester County Charter.

App. 54

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed
the Corporate Seal of said County
Board of Legislators on this 27th
day of November, 2019.

/s/ Malika Vanderberg
Malika Vanderberg

The Clerk of the Westchester
County Board of Legislators

County of Westchester,
New York

[SEAL]

APPENDIX E

**PETITION TO THE MEMBERS OF THE
TOWN BOARD OF THE TOWN OF HARRISON,
NEW YORK FOR REDRESS OF
VIOLATION OF ARTICLE IX OF THE
NEW YORK STATE CONSTITUTION**

A. Facts Material to this Petition for Redress

1. On November 5, 2019, Ron Belmont was elected to a two year term as Supervisor of the Town of Harrison.
2. On November 7, 2019, Supervisor Belmont released his proposed budget for 2020 which included the same salary he had for 2019.
3. On November 20, 2019, Supervisor Belmont amended the budget for 2020 to include a nearly \$30,000 pay raise for the Town Supervisor.
4. On December 5, 2019 the amended budget was adopted as law by a vote of the Town Board.
5. The amended budget violates Article IX, Section 2(c)(1) of the New York State Constitution which prohibits the Board from adopting a local law that is "inconsistent" with any provision of the New York State Constitution, including Article III, Section 6 which reads in part, "Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation."

6. The Town of Harrison will receive funds from N.Y. State in 2020 that will be co-mingled with Town-generated funds in its general fund.
7. Article IV, Section 4 of the United States Constitution guarantees the People of the State of New York a “Republican Form of Government.”
8. The Petition clauses of the United States Constitution (Bill of Rights, First Amendment) and New York State Constitution (Bill of Rights, Section 9) obligate the Government, including the Executive and Legislative, to provide a meaningful response to a Petition for Redress of its violation of the Rule of Law, including the State and Federal Constitutions and laws pursuant thereto.

Relief Requested

Pursuant to the historical scope and purpose of the Petition Clause of the First Amendment to the Constitution for the United States of America and Article I, Section 9 of the Constitution for the State of New York, the Harrison Town Board is requested to immediately respond to this Petition for Redress by either repealing and amending the Budget to restore the compensation of the Supervisor to its 2019 amount or by providing the undersigned with a written document in which it proves petitioners’ facts wrong by argument or evidence, in which case the Town is requested to refrain from providing the increase in compensation until the grievance is redressed.

App. 57

Dated: January 6, 2020

/s/ <u>Anthony Futia, Jr.</u>	/s/ <u>Robert L. Schulz</u>
Anthony Futia, Jr.	Robert L. Schulz
34 Custis Ave.	2458 Ridge Road
N. White Plains, NY	Queensbury, NY 12804
10603	

NEW YORK STATE CONSTITUTION

ARTICLE I: Bill of Rights

§9. 1. No law shall be passed abridging the rights of the people . . . to petition the government.

ARTICLE IX: Local Governments

§2. (c) In addition to powers granted in the statute of local governments or any other law. (i) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws **not inconsistent with the provisions of this constitution** or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government: (emphasis added).

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, **compensation**, hours of work, protection, welfare and safety of its officers and employees. except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. (emphasis added).

ARTICLE III: Legislature

[§6. Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. **Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation.** The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section,

until changed by law pursuant to this section. (emphasis added).

ARTICLE XIII: Public Officers

§7. Each of the state officers named in this constitution shall, during his or her continuance u office. receive a compensation, to be fixed by law, **which shall not be increased or diminished during the term for which he or she shall have been elected or appointed;** nor shall he or she receive to his or her use any fees or perquisites of office or other compensation. (emphasis added).

UNITED STATES CONSTITUTION
BILL OF RIGHTS

First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, **and to petition the Government for a redress of grievances.** (emphasis added).

ARTICLE IV - THE STATES

Section 4. Republican government **The United States shall guarantee to every State in this Union a Republican Form of Government,** and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. (emphasis added).
